

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	:	
<b>Plaintiff,</b>	:	<b>Case No. CR-2-06-016</b>
<b>v.</b>	:	<b>JUDGE MARBLEY</b>
<b>HENRY PENA,</b>	:	
<b>Defendant.</b>	:	

**ORDER**

This matter is before the Court on Defendant's Second Request for a Corrected Judgment Entry. Defendant requests this Court modify the Judgment and Commitment Order ("J&C") to grant Defendant credit for twenty-six months and three days he served on a New York state sentence from February 27, 2006 through May 2, 2008, the date he was released from New York state custody to come to Ohio on this case.

Defense counsel asserts that the Court granted Pena credit for the time served in his New York case, but contends "that is not clear from the Judgment Entry and defense counsel is concerned that the Bureau of Prison[s] may not discern that if not spelled out more clearly." (Def. Request p. 2.) The Government agrees that the Court indicated it would include in the J&C a recommendation that the Defendant be given credit for the twenty-six months and three days served on the New York state sentence. It was agreed that should the Bureau of Prisons fail to give the Defendant credit for that time once he began serving his federal sentence, the issue could then be addressed through a Rule 35 motion. Therefore, the Government does not oppose a modification to the J&C to clarify the Court's recommendation that the Defendant be given credit for that time served on his New York state conviction.

For the reasons stated above and further elaborated on in the parties' filings, and because the Government does not object, Defendants' Second Request for a Corrected Judgment Entry is **GRANTED.**

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**UNITED STATES DISTRICT COURT**

**Dated: June 25, 2009**